

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 248 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

RANCHHODLAL JETHALAL MARFATIA

Versus

SHAH CHANDRAKANT RAMESHCHANDRA& CO.

Appearance:

MR HB SHAH for Petitioner

MR NATWARLAL M SHAH for Respondent No. 1

MR SHAKEEL A QURESHI for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/04/98

ORAL JUDGEMENT

This appeal has been preferred by the defendant no.1 challenging the judgment and decree of the lower Appellate Court confirming the decree of the Trial Court. The dispute centers in short compass. 800 lumps of Jaggery were entrusted by the plaintiff- respondent to the defendants for carriage and delivery. In the suit

allegation of the respondent was that out of 800 lumps jaggery only 750 were delivered and 50 lumps were missing. Accordingly damages were claimed for non delivery of 50 lumps jaggery together with interest.

The suit was contested on numerous grounds stated in the written statement.

The Trial Court found the defence unbelievable. Holding the defendant no.1 responsible for non delivery of 50 lumps it passed decree for Rs.1254/- together with interest @ 6% p.a. An appeal was filed before the lower Appellate Court which was dismissed. It is therefore, this Second Appeal.

The following substantial questions of law were formulated in this Second Appeal :

[1] Whether the second respondent has, in the facts and circumstances of the case, discharged its burden by showing that it had delivered the goods entrusted to it to the plaintiff (respondent no.1)? If so, what is its effect ?

[2] What is the effect of the two documents Exhs.48 and 49 on the liability of the respondent No.2 and the appellant i.e. original defendants ?

Learned Counsel for the parties were heard. There is concurrent finding of the two Courts below that it was a case of short delivery of 50 lumps jaggery. This finding was arrived at by the two Courts below by proper appraisal of evidence on record hence substantial questions of law formulated in this Second Appeal are only for the sake of academic exercise. Once the parties entered trial and adduced evidence knowing fully well their stand and the evidence was appreciated by the two Courts below, the question of onus of proof lost its significance. Consequently question of shifting of onus of proof also lost significance hence the substantial questions formulated in the appeal retain the character of academic value. By entering into these questions concluded findings of fact recorded by the two Courts below, cannot be disturbed. I do not find any error in appreciating the evidence by the two Courts below and the conclusion arrived regarding non delivery of 50 lumps jaggery for which defendant no.1 was held responsible. There is thus no merit in this Second Appeal which is

hereby dismissed. In the circumstances of the case the parties shall bear their own cost.

Sd/-

(D.C.Srivastava, J)

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m.m.bhatt